

Federal Court



Cour fédérale

Date: 20161130

Docket: T-1343-16

Citation: 2016 FC 1321

Ottawa, Ontario, November 30, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

GEORGE NOEL

Applicant

and

**COLD LAKE FIRST NATIONS,
COLD LAKE FIRST NATIONS ELECTION
APPEAL COMMITTEE and ALAN ADAM,
ELECTORAL OFFICER FOR COLD LAKE
FIRST NATIONS**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] George Noel has brought an application for judicial review of a decision of the Cold Lake First Nations [CLFN] Appeal Committee established under the CLFN Election Law. The Appeal Committee dismissed his appeal of a decision of the CLFN Election Officer to exclude him as a

candidate for Chief of the CLFN. The Election Officer found that Mr. Noel was ineligible to run for Chief because he owed a debt to the CLFN in excess of \$3,000.00.

[1] The CLFN Appeal Committee found that Mr. Noel was properly excluded as a candidate for Chief due to the unpaid debt. The Appeal Committee also found that Mr. Noel was ineligible to run for Chief due to his familial relationship with Beatrice Martial. Ms. Martial was also a candidate for Chief of the CLFN, and was ultimately successful.

[2] For the reasons that follow, the CLFN Appeal Committee unreasonably found that the evidence before it was sufficient to establish that Mr. Noel was indebted to the CLFN in an amount exceeding \$3,000.00. The Appeal Committee also failed to consider his response to the allegation that he was ineligible to run for Chief due to his familial relationship with Ms. Martial. The application for judicial review is therefore allowed, and the matter is remitted to the Appeal Committee for redetermination.

II. Background

[3] Mr. Noel is a member of the CLFN who previously served as a Councillor. On June 15, 2016, he was nominated to run for Chief of the CLFN.

[4] Four protests were filed regarding Mr. Noel's candidacy, all of them dated June 17, 2016:

a) Cecilia Piche stated in her protest against Mr. Noel:

Section L: of the Election Law dated May 27, 1986. Any person that owes in excess of \$3,000.00 + who's made no attempt to repay loan should not be eligible to run.

George Noel owes more than \$3,000.00 in excess therefore cannot run for Chief of Cold Lake First Nations. I put in documents to prove this.

- b) Sharon Marten stated in her protest against Mr. Noel:

Ignorant (uneducated) FULL OF ANGER – violence

70 year old with dementia

Elec Law sect 4 states H of good character I sound mind

Brother of Bernice Martial same mother

Sect I – L. immediate family

- c) Christina Chalifoux stated in her protest against Mr. Noel:

George Noel is not of good moral character as proven numerous times at Band mtgs, nominations, etc.

Section 4 – Eligibility for Chief, H states that a nominee has to have good moral character.

George Noel is running for Chief against his two siblings (Bernice Martial, Gail Meshego) Section I – Definitions L immediate Family states sisters and brothers cannot run together for the same position

- d) Conrad Metchewais stated in his protest against Mr. Noel and Ms. Martial:

Immediate family not able to run

Both are brother and sister

[5] On June 18, 2016, the CFLN Election Officer, Allan Adam, wrote to Mr. Noel to inform him that he was not eligible for nomination because he did not meet the criteria found in s 4.L of the CLFN Election Law, which provides that:

Any person who owes the Cold Lake First Nations administration in excess of three thousand dollars (\$3,000.00) and who has made no attempt to repay the loan shall not be eligible for nomination.

[6] Mr. Noel's name was therefore removed from the list of nominees for Chief of the CLFN.

[7] The election for Chief of the CLFN took place on June 22, 2016.

[8] Mr. Noel appealed his exclusion from the list of nominees to the CLFN Appeal Committee on July 16, 2016. The Appeal Committee convened a hearing to deal with numerous appeals arising from the elections for the CLFN Chief and Council on August 10, 2016. At the hearing, Mr. Noel maintained that he did not owe a debt to the CLFN and, in the alternative, that any debt could not be collected pursuant to the *Alberta Limitations Act*, RSA 2000, c L-12. He also argued that no evidence of the debt had been presented to the Appeal Committee.

III. Decision under Review

[9] On August 11, 2016, the CLFN Appeal Committee issued its decisions in respect of Mr. Noel's appeal and other appeals concerning the elections for the CLFN Chief and Council.

The Appeal Committee dismissed Mr. Noel's appeal as follows:

The outstanding balance owed to the Cold Lake First Nations has been established. A denial is NOT sufficient to overturn the finding. The burden of proof on a balance of probabilities has NOT been rebutted. The monies remain outstanding. If a re-payment plan is established before the next election, this ground cannot be relied on by a 'Protest'.

In the secondary ground, No immediate family may run for the same position including brother and sister, as George Noel is the brother of Bernice Martial, this is not allowed 6(c). The appeal is **dismissed**.

[Emphasis original]

IV. Issues

[10] This application for judicial review raises the following issues:

- A. What is the standard of review?
- B. Was the Appeal Committee's decision procedurally fair?
- C. Was the Appeal Committee's decision reasonable?

V. Analysis

A. *What is the standard of review?*

[11] Questions of procedural fairness are subject to review by this Court against the standard of correctness (*Jacko v Cold Lake First Nation*, 2014 FC 1108 at para 14 [*Jacko*]; *Desnomie v Peepeekisis First Nation*, 2007 FC 426 at para 11; *Weekusk v Wapass*, 2014 FC 845 at para 10; *Parenteau v Badger*, 2016 FC 535 at para 36 [*Parenteau*]).

[12] The CLFN Appeal Committee's application of the eligibility requirements of the CLFN Election Law is subject to review by this Court against the standard of reasonableness (*Jacko* at para 13). The Court will intervene only if the decision falls outside the "range of possible,

acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

B. *Was the Appeal Committee’s decision procedurally fair?*

[13] Mr. Noel argues that “[w]hen a decision is made by an administrative tribunal without hearing any evidence whatsoever to form the basis of that decision and without any transparency and with no evidence as required by *Dunsmuir*, it will be unreasonable and contrary to procedural fairness” (citing *Parenteau* at paras 49-51; *Dunsmuir* at paras 47-50).

[14] The CLFN Chief and Council respond that Mr. Noel had the benefit of an oral hearing, and the CLFN Appeal Committee heard submissions from him personally and also from his counsel. They therefore maintain that Mr. Noel received a higher degree of procedural fairness than has been found necessary in similar circumstances. They rely on the Federal Court of Appeal’s decision in *Bruno v Samson Cree Nation*, 2006 FCA 249 at paragraph 22 [*Bruno*], where the Court stated: “This does not mean that a full oral hearing was required, but simply that [the applicant] should have been given the opportunity to respond to the [...] complaint, before the Board concluded that he was ineligible for Council under section 4 of the Election Law”.

[15] There is no dispute that Mr. Noel was aware of the allegation that he owed in excess of \$3,000.00 to the CFLN. The letter from the CLFN Election Officer dated June 18, 2016 informed him that he had been disqualified as a candidate for Chief for this reason. He appealed the Election Officer’s decision by letter from his counsel dated July 15, 2016, and responded to

the allegation of the outstanding debt both in writing and orally. I can find no fault with the CLFN Appeal's Committee's procedure regarding the allegation of the unpaid debt.

[16] However, protests regarding Mr. Noel's familial relationship with Ms. Martial were not cited in the Election Officer's decision to disqualify Mr. Noel as a candidate for Chief, nor were they addressed in the letter from Mr. Noel's counsel to the CLFN Appeal Committee. The CLFN Chief and Council argue that the Appeal Committee was not limited to considering grounds for disqualification identified by the Election Officer, and note that Mr. Noel addressed the allegation concerning his relationship with Ms. Martial in the documents he submitted to the Appeal Committee. In particular, the record of the proceedings before the Appeal Committee contains the following statement from Mr. Noel:

I, George Noel, do swear that I was Custom Adopted (it is a legally binding Canadian legislation) in the Dene tradition by Teddy (Thadius) and Corrine Scanie at two years old when I was left behind when Isabelle Noel was forced into an arranged marriage with Joseph Martial. Teddy (Thadius) and Corrine Scanie raised me as their son and they were the only parents that I ever had. I lived with them my entire life until I was on my own as an adult. I was not made aware of the identity of my biological parents until much later in my life. I was not considered a sibling of any children born to either of my biological parents until much later in my adult life. I was not accepted by my biological family throughout my life and grew up believing my uncles were my siblings. I do not consider Bernice Martial or Gail Muskego as my immediate siblings and respect the Custom Adoption Tradition I was subjected to.

I, George Noel, do swear that I do not share the same beliefs, values, principles, traditions and customs that I was raised with by my parents, Teddy and Corrine Scanie with Bernice Martial or Gail Muskego.

[17] It is therefore clear that Mr. Noel was aware of the protests to his candidacy based on his familial relationship with Ms. Martial. Importantly, he chose to address this allegation in the materials he submitted to the CLFN Appeal Committee. It would have been preferable for the Appeal Committee to raise this further allegation in the course of the oral submissions made by Mr. Noel and his counsel. However, given the relatively modest level of procedural fairness owed to Mr. Noel by the Appeal Committee pursuant to *Bruno*, I am unable to find that the Appeal Committee's procedure regarding the allegation of a prohibited familial relationship was unfair.

C. *Was the Appeal Committee's decision reasonable?*

(1) Debt Owed to the CLFN

[18] The CLFN Chief and Council argue that the evidence before the CLFN Appeal Committee "clearly established" that Mr. Noel owed in excess of \$3,000.00 to the CLFN. The Certified Tribunal Record [CTR] includes what appears to be a ledger of amounts owed by Mr. Noel to the CLFN. However, in his affidavit filed in response to this application for judicial review, the CLFN Election Officer acknowledges that he verified the documents provided by Ms. Piche in support of her protest only by confirming their contents with Elder Advisors, specifically former Chief Joyce Metchewais, Leona Metchewais and Elise Charland. The Election Officer also deposes that:

In and around June 17, 2016, I requested Amanda Lapine, Assistant Electoral Officer and Band Employee, to contact the Cold Lake First Nation's Chief Financial Officer to obtain further documents from Cold Lake First Nation's Archive to verify the contents of the Cecilia Piche's Protest. I only received these documents on October 7, 2016 by the email from Chief Martial.

[19] Mr. Noel takes the position that the only documents before the CLFN Appeal Committee when it considered his appeal on August 10, 2016 were those initially provided by Ms. Piche in support of her protest. I am satisfied that the evidence adduced in these proceedings indicates that the additional documents contained in the CTR were not provided to the Election Officer until October 7, 2016, more than two months after the Appeal Committee rendered the decision under review.

[20] Mr. Noel retained Taiwo Kasali, a Chartered Professional Accountant, to examine the documentation provided by Ms. Piche in support of her protest. Mr. Kasali provided the following statement to the Appeal Committee:

1. The said document does not have the name of a creditor whom George Noel is allegedly owing more than \$3,000.
2. There is no statement of claims attached to this document showing an outstanding or Past Due debt.
3. The document is not a financial statement and appears to be fabricated.

[21] There was no evidence before the CLFN Appeal Committee to contradict the statement of the Chartered Professional Accountant retained by Mr. Noel.

[22] The CTR also contains numerous cheque stubs and handwritten notes, most dating from the early 1990s. However, the affidavits submitted on behalf of the CLFN Chief and Council do not explain the origin of these documents, and it is unclear whether they were considered by the CLFN Appeal Committee before it rendered its decision. The CLFN Chief and Council argue

that the CTR contains material that was, or is deemed to have been, before the tribunal at the time the decision was made. I disagree.

[23] The purpose of the CTR is to ensure that an applicant may be provided with those documents which were before the decision-maker (*Canada (Attorney General) v. Canada (Information Commissioner)*, [1997] FCJ No 1160 (TD) at para 26). A document that was before the decision-maker is presumed to be relevant to a request under Rule 317 of the *Federal Courts Rules*, SOR/98-106 (*Jolivet v Canada (Justice)*, 2011 FC 806 at para 27, citing *Access Information Agency Inc v Canada (Transport)*, 2007 FCA 224 at paras 7, 21). However, Rule 317 does not introduce evidence into the record. The appropriate way in which to introduce the CTR, in whole or in part, into the record is by affidavit (*Canada (Attorney General) v Lacey*, 2008 FCA 242 at paras 6-7). Absent consent, I am unable to infer from the CTR that the documents it contains were in fact before the CLFN Appeal when it considered Mr. Noel's appeal.

[24] There is insufficient evidence before this Court to demonstrate how the CLFN Appeal Committee reached its conclusion that Mr. Noel was indebted to the CLFN in an amount exceeding \$3,000.00. Nor do the Appeal Committee's reasons address, or even mention, the statement of the Chartered Professional Accountant that was submitted to the Appeal Committee by Mr. Noel.

[25] I am not satisfied that the CLFN Appeal Committee's reasons demonstrate the necessary "justification, transparency and intelligibility within the decision-making process" (*Dunsmuir* at

para 47). There were serious shortcomings in the evidence considered by the Appeal Committee; the Appeal Committee failed to address the evidence of the Chartered Professional Accountant retained by Mr. Noel; and the CTR tendered in these proceedings does not permit the Court to supplement the Appeal Committee's reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 12). The Appeal Committee's decision to dismiss Mr. Noel's appeal of his exclusion as a candidate for Chief on the ground of an unpaid debt was therefore unreasonable.

(2) Familial Relationship with Bernice Martial

[26] The Election Officer did not exclude Mr. Noel as a candidate for Chief due to his familial relationship with Ms. Martial. The CLFN Appeal Committee nevertheless cited this as a "secondary ground" for dismissing his appeal of the Election Officer's decision.

[27] Section 14.C of the CLFN Election Law provides that "[a]ll protests must outline the reasons for the appeal based upon the traditional election law" of the CLFN. Mr. Noel did not raise the issue of his relationship to Ms. Martial in his appeal, although he appears to have addressed the allegation in the documents he submitted to the CLFN Appeal Committee.

[28] Assuming, without deciding, that it was open to the CLFN Appeal Committee to dismiss the appeal on a ground that was not raised by Mr. Noel, there is nothing to indicate that the Appeal Committee gave any consideration to the detailed explanation offered by Mr. Noel for why he should not be considered the brother of Ms. Martial. The Appeal Committee's decision

to dismiss Mr. Noel's appeal of his exclusion as a candidate for Chief on the ground of a prohibited familial relationship was therefore unreasonable.

VI. Conclusion

[29] The CLFN Appeal Committee unreasonably found that the evidence before it was sufficient to establish that Mr. Noel was indebted to the CLFN in an amount exceeding \$3,000.00. The Appeal Committee also failed to consider Mr. Noel's response to the allegation that he was ineligible to run for Chief due to his familial relationship with Ms. Martial.

[30] The application for judicial review is therefore allowed, and the matter is remitted to the CLFN Appeal Committee for redetermination. If the parties are unable to agree on costs, they may make written submissions to the Court, not exceeding three pages, within 14 days of the date of this Judgment.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, and the matter is remitted to the CLFN Appeal Committee for redetermination. If the parties are unable to agree on costs, they may make written submissions to the Court, not exceeding three pages, within 14 days of the date of this Judgment.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1343-16

STYLE OF CAUSE: GEORGE NOEL v COLD LAKE FIRST NATIONS,
COLD LAKE FIRST NATIONS ELECTION APPEAL
COMMITTEE and ALAN ADAM, ELECTORAL
OFFICER FOR COLD LAKE FIRST NATIONS

PLACE OF HEARING: EDMONTON, ALBERTA

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JUDGMENT AND REASONS: FOTHERGILL J.

DATED: NOVEMBER 30, 2016

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